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July 11, 1989

FILE NO.

JUL 12 1989

Mr. Robert L. Morgan, P.E.
State of Utah Natural Resources
1636 West North Temple
Suite 220
Salt Lake City, Utah 84116

WATER RIGHTS
SALT LAKE

Re: Request for Reconsideration of Order of July 7, 1989
Re: Richard L. Clissold - Surface Water Diversion
in Snyderville Basin

Dear Bob:

I have received a copy of a letter your office sent to my client Richard Clissold dated July 7, 1989. I have enclosed a copy of that letter for your review. The problem over water distribution in the south end of Snyderville is becoming severe. Dr. Osguthorpe is daily ripping out my client's diversion works, tight damming East Canyon Creek and taking all of the water in the creek down the west grade canal in order to satisfy his irrigation needs. Although my client is aware that Dr. Osguthorpe has water rights for the irrigation of approximately 114 acres of land, Clissold is the owner of at least one-third of the water in East Canyon Creek under his decreed rights and he is being deprived of the use and benefit of that water by the wrongful acts of others who seek to employ the support of your office to justify their own unlawful activities.

Over the past two weeks, Mr. Clissold has re-established his diversion dam only to find it torn out sometimes merely hours later by Osguthorpes. On one particular day, Mr. Clissold re-installed his diversion and Osguthorpe or his employees ripped it out about three or four times during the course of the day. Apparently during one of those incidences, Dr. Osguthorpe brought six armed men onto Mr. Clissold's property. Someone may have been injured had Mr. Clissold or his employees been in the act of re-establishing

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his diversion dam at the time the Osguthorpes and their hired hands entered Clissold's property.

Mr. Clissold later confronted Steve Osguthorpe at his home about Clissold's irrigation water rights. While Osguthorpes acknowledged that Clissold has water rights, they justify their conduct in taking all of the water in the stream on the fact that they have measuring devices installed at their points of diversion on the West Grade Canal and Clissold does not, and secondly, that Mr. Pace, Mr. Bernolfo, and perhaps others are diverting water from the West Grade Canal, and that if Osguthorpe's do not take all of the available water from East Canyon Creek, they cannot get the water they are entitled to because of these other unauthorized diversions.

Apparently Osguthorpes then came to your office and demanded that the State Engineer do something to force Mr. Clissold to install measuring devices in compliance with earlier orders. This meeting undoubtedly resulted in the letter Jim Riley has sent on your behalf. Unfortunately, this letter simply does not reflect the true nature of the problem or the physical situation on the ground. The threat to shut off Clissold's water is not a constructive solution to the situation.

In point of fact, Mr. Clissold does have diversion devices and measuring devices in place. These have been in place for many years. Osguthorpe and others, however, have made unauthorized relocations of the channel of East Canyon Creek so that the water now totally bypasses these historic diversion splitters and measuring devices. More importantly, East Canyon Creek is the major natural stream in this area. These diversion splitters and measuring devices control the distribution of water not only to Clissold and Osguthorpe, but to other water users on both East Canyon Creek and the West Grade Canal. It will be an expensive proposition to restore the stream channel to its original location so that the water of East Canyon Creek will flow through the existing diversion splitter and weirs on East Canyon Creek in the West Grade Canal. It is patently unfair to require Clissold to bear this expense alone and to threaten him with the enforced termination of his use of

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water unless and until he does. Others rely on these facilities as well, but they have not responded to your earlier order and short of litigation, Clissold cannot force their contribution. If water is to be shut off, it should affect Osguthorpe as well since he has not assisted in the restoration of the channel.

The Osguthorpes are very aggressive about taking water. Their rights under Award 418 of the Weber River Decree entitle them to divert from the West Grade Canal for the irrigation of only 114 acres of land. I have the impression that they have substantially increased their irrigated acreage through use of a sprinkler system. Apparently no effort has been made to restrict his use to conform with his water rights. Others are making unauthorized diversions from the West Grade Canal because Red Pine Creek is dry and they are without water. This situation is intolerable. Osguthorpe is extremely volatile and as I have mentioned, has already brought armed men on to Clissold's property.

Clissold can obviously sue Dr. Osguthorpe to stop the interference with his water rights, but that does not resolve the larger problem of restoring the flow of water through the diversion splitters in East Canyon Creek and through the measuring weirs that are in place on both the creek and the West Grade Canal, nor does it solve the problems created by your Order of July 7, 1989. It would not be possible to litigate in 30 days time, and short of litigation, it may be impossible to get Osguthorpe and others to contribute to the restoration of the channel. Clissold should not be forced under penalty of shutting off his diversion to bear the expense of restoring the channel and placing the existing diversion structures and measuring devices back into service which benefit a handful of other water users.

The State Engineer's assistance is needed to mediate this situation. Dr. Osguthorpe is attempting to use your office and your administrative orders as a means of validating and justifying his otherwise illegal tight damming of East Canyon Creek. He is interfering with the water rights not only of Clissolds, but of others downstream on East Canyon Creek. This situation must be remedied. Litigation is one solution, but it is not a good solution because of the time required and the severe drought we are experiencing this summer.

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I would like to visit with you about this situation to see if we can devise some strategy to deal with this issue.

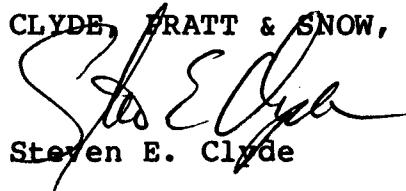
Please consider this letter as a request for reconsideration of your Order of July 7, 1989 pursuant to Rules R625-6-17 of the Division of Water Rights and Sections 63-46b-13 and 73-3-14, U.C.A. 1953.

I would appreciate your getting back to me on this at your earliest possible convenience.

Best regards.

Very truly yours,

CLYDE, PRATT & SNOW, P.C.



Steven E. Clyde

SECjl

cc: Richard Clissold
John Mabey Jr., Esq.